

DETAILED ACTION

Acknowledgements

1. The Examiner for this application has changed. Please note that Joshua Murdough is the Examiner of record in any future correspondence.
2. Claims 1-13 and 15-25 are currently pending and have been examined.

Interview Summary

3. The previous Interview Summary indicated that a written response was due in one month from the mailing date of the summary. However, since it was an Examiner Initiated Interview, this requirement should be disregarded. No response regarding an Interview Summary is due.

Information Disclosure Statement

4. The Information Disclosure Statement (IDS) received 16 December 2005 appears to have been considered by the previous Examiner on 9 May 2007. However, evidence beyond a change in status for the document seems to be lacking. Whether the previous Examiner considered the IDS cannot be conclusively determined. Therefore, the present Examiner has considered it and has initialed and signed the IDS. A copy of which should be attached to this communication.

EXAMINER'S AMENDMENT

5. An Examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 C.F.R.

§1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

6. Authorization for this examiner's amendment was given in a telephone interview with John R. Schaefer (Reg. # 47,921) on 23 June 2008.
7. The application has been amended as follows:
 - a. In claim 1, line 5, after "therein," delete "functionality data" and replace it with --software--
 - b. In claim 1, line 7, after "apparatus," delete "for"
 - c. In claim 1, line 8, after "being," delete "configured" and replace it with --programmed--
 - d. In claim 1, line 8, after "receive," delete "functionality data" and replace it with --software--
 - e. In claim 1, line 10, after "being," delete "configured" and replace it with --programmed--
 - f. In claim 1, line 13, after "being," delete "configured" and replace it with --programmed--
 - g. In claim 1, line 16, after "being," delete "configured" and replace it with --programmed--
 - h. In claim 1, line 16, after "request," delete "functionality data" and replace it with --software--
 - i. In claim 1, line 21, after "being," delete "configured" and replace it with --programmed--

- j. In claim 1, line 22, after “requested,” delete “functionality data” and replace it with --software--
- k. In claim 1, line 23, after “being,” delete “configured” and replace it with --programmed--
- l. In claim 1, line 23, after “requested,” delete “functionality data” and replace it with --software--
- m. In claim 1, line 25, after “requested,” delete “functionality data” and replace it with --software--
- n. In claim 3, line 2, after “the,” delete “functionality data” and replace it with --software--
- o. In claim 4, line 2, after “the,” delete “functionality data” and replace it with --software--
- p. In claim 5, line 2, after “the,” delete “functionality data” and replace it with --software--
- q. Cancel claims 9-18
- r. In claim 19, line 17, after “requires,” delete “functionality data” and replace it with --software--
- s. In claim 19, line 21, delete “functionality data” and replace it with --software--
- t. In claim 20, line 2, after “whether,” delete “data” and replace it with --software--
- u. Cancel claim 21
- v. In claim 22, line 2, after “said,” delete “functionality data” and replace it with --software--

- w. Cancel claim 23
 - x. In claim 24, line 2, after "said," delete "functionality data" and replace it with -- software--
 - y. Cancel claim 25
8. The following is an Examiner's statement of reasons for allowance:
9. Regarding the claimed terms, the Examiner notes that a "general term must be understood in the context in which the inventor presents it." *In re Glaug* 283 F.3d 1335, 1340, 62 USPQ2d 1151, 1154 (Fed. Cir. 2002). Therefore the Examiner must interpret the claimed terms as found on pages 1-17 of the specification. Clearly almost all the general terms in the claims may have multiple meanings. So where a claim term "is susceptible to various meanings, . . . the inventor's lexicography must prevail . . ." *Id.* Using these definitions for the claims, the claimed invention was not reasonably found in the prior art.
10. The primary reference Tobin (U.S. 2002/0077992) teaches the general system including a portable data carrier (removable memory device, Title), a plurality of terminals (POS terminals, paragraph [0029]), and a node computer (secure server, paragraph [0051]). Durocher (Possessing a POS) teaches a similar system clearly showing software on the terminal (paragraph 3). However, Tobin and Durocher fail to teach, individually or in combination, the programmed functionality of the claimed system, including: "request[ing] software from said node computer by forming a start sequence," "the start sequence comprising requested transaction information and card data read by the said reading apparatus from a portable data carrier," "receive software for further configuring the terminal to perform a requested transaction," and "the terminal and the

node computer each performing partial steps of the transaction." Moreover, the missing claimed elements from Smith are not found in a reasonable number of reference(s). Yet even if the missing claimed elements were found in a reasonable number of references, a person of ordinary skill in the art at the time the invention was made would *not* have been motivated to include these missing elements in an embodiment in the Tobin disclosure because: conventional wisdom would not have the card data sent to the node to request the software because the passing of the card data, although encrypted, further exposes it to possible capture by external parties and the partial processing on each of the terminal and node computer would not be intuitive in light of the software being sent to the terminal.

11. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSHUA MURDOUGH whose telephone number is (571)270-3270. The examiner can normally be reached on Monday - Thursday, 7:00 a.m. - 5:00 p.m.

13. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Fischer can be reached on (571) 272-6779. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3621

14. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

J. M.

Examiner, Art Unit 3621

/ANDREW J. FISCHER/

Supervisory Patent Examiner, Art Unit 3621